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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Glenn Defense Marine-Asia PTE, Ltd.

File: B-401480

Date: August 17, 2009

David S. Black, Esq., and Jacob W. Scott, Esq., Holland & Knight, LLP, for the protester.

Jan M. Whitacre, Esq., Department of the Navy, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of the rejection of the protester's quotation is denied, where the solicitation required the contractor to satisfy business licensing requirements in the Commonwealth of the Northern Mariana Islands and where the agency was informed by the Northern Mariana Islands that the protester's quoted business arrangement would not satisfy the Island's licensing requirements.

DECISION

Glenn Defense Marine-Asia PTE, Ltd. (GDMA) of Singapore, protests the Department of the Navy's "award" of a contract to Ambyth Shipping & Trading, Inc. under request for quotations (RFQ) No. N00604-09-Q-0007 for ship husbanding services. GDMA asserts that its quotation was improperly rejected on the basis that the firm did not have a valid business license for the Commonwealth of the Northern Mariana Islands.

We deny the protest.

On June 8, 2009, the Navy issued an unnumbered solicitation for ship husbanding services for the USS Thach at Saipan in the Northern Mariana Islands from June 14 through June 17. GDMA protested to our Office that the solicitation did not include certain required information. On June 9, the Navy notified our Office that it would cancel the solicitation and resolicit the work under a revised solicitation. The Navy

also stated that the revised solicitation would include a business license requirement:¹

[d]ue to our concern that the Commonwealth may not allow an unlicensed contractor to perform work on the island, we intend to include a requirement in the solicitation to the effect that offerors must submit proof of a current license to conduct business in Saipan or otherwise satisfy the Contracting Officer of their ability to obtain the necessary license before the time for performance. Failure of an offeror to produce a license or otherwise satisfy the [contracting officer] will result in rejection of its offer.

Navy Letter to GAO, June 9, 2009, at 2.

On June 10, the Navy issued the RFQ, which provided for award to the firm with the lowest-priced, technically-acceptable quotation. RFQ at 26. The RFQ also informed firms that “[t]he contractor must meet the licensing and registration requirements in conducting business in the [Northern Mariana Islands (CNMI)]. The CNMI Public Law 11-73 requires that a company obtain a business license in order to do business.” RFQ at 26-27.

After the RFQ was issued, GDMI informed the Navy that “GDMI’s proposal will include a teaming member who is a fully licensed shipping agent in Saipan. The shipping agent will perform all specific tasks for which a business license is required,” to which the agency’s counsel responded that the “teaming arrangement appears workable.” Protest at 4. The protester sought additional reassurances from the agency that proposing a “teaming member” that is “a fully licensed husbanding agent” would be acceptable, and, according to the protester, it was again reassured by the agency that the teaming arrangement would satisfy the new business license requirement.² Id.

¹ According to the contracting officer, shortly after the June 8 solicitation was issued, the contracting officer had a conversation with a representative from GDMA about GDMA’s husbanding resources on Saipan. The contracting officer was informed that GDMA was not licensed to work in Saipan, but that GDMA intended to hire an on-island firm to perform the work. The contracting officer informed GDMA that the Northern Mariana Islands strictly enforces its business licensing laws and regulations. CO’s Statement at 1.

² The agency does not dispute this account of what happened.

On June 10, GDMA withdrew its first protest, stating that

I have spoken with [agency counsel] about the interpretation and intended application of the business license requirement. [agency counsel] confirmed that an offeror can satisfy this requirement if it proposed as a teaming member a local, fully licensed husbanding agent subcontractor who will perform all tasks for which a business license is required...In reliance on the foregoing corrective action and communication with the Agency's counsel, GDMA hereby withdraws its protest.

Protester's Email to GAO, June 10, 2009.

On June 11, GDMA submitted its quotation in response to the RFQ. With regard to the business license requirement, GDMA stated that it would "satisfy the requirement by utilizing [DELETED], our fully licensed husbanding agent subcontractor who will perform all tasks for which a business license is required."³ The contracting officer requested a copy of GDMA's teaming agreement with [DELETED], and GDMA provided its letter of appointment, which states that "[GDMA] appoints [DELETED] to represent our company as local agents to support the USS THACH . . . proposed visit to Saipan." Protest, exh. F, GDMA Email to the Navy, June 11, 2009.

The contracting officer initially accepted GDMA's quoted business relationship, and, because GDMA submitted the lowest-priced quotation, contacted the Military Affairs Liaison Office for the Northern Mariana Islands to evaluate [DELETED] responsibility.⁴ Contracting Officer's Statement at 1. The Liaison Office informed the contracting officer, however, that GDMA's quoted business relationship with [DELETED] as GDMA's agent, was not acceptable and that GDMA would have to obtain its own business license.⁵ Id. at 2.

³ According to the protester, GDMA had an attorney licensed in the Northern Mariana Islands inform agency counsel that GDMA was not required to have its own business license in the Northern Mariana Islands under these circumstances. The protester has also provided an email sent by a former attorney general for the Northern Mariana Islands who also states that GDMA was not required to have its own business license, where [DELETED] had been appointed that firm's agent. See Comments, exh. H, Email, June 12, 2009.

⁴ The agency explains that this "Office is the single point of contact and clearinghouse on all matters relative to the U.S. Military and Veterans Affairs in the [Northern Mariana Islands]." See Navy Email to GAO, July 28, 2009; see also http://www.cnmigov.net/dept_dtl.asp?deptID=22.

⁵ The Navy provided a memorandum from the Office of the Attorney General, Civil Division, of the Northern Mariana Islands that states that a prime contractor does

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The contracting officer relayed these concerns to GDMA. The contracting officer explained that the agency would not award the contract without confirmation from the Northern Mariana Islands that GDMA's proposed business relationship was acceptable. In this regard, the contracting officer states that she

urged [GDMA] to speak with Ms. [C, an official in the Liaison Office of the Northern Mariana Islands] or others in the government to resolve any issues. I even delayed the award decision by four or five hours to give GDMA additional time to 'fix' the problem. It is my understanding that a representative of [DELETED] and/or its attorney spoke with Ms. [C]. Sometime in the afternoon of the 12th of June, I was contacted by GDMA and was told that everything was taken care of and to contact Ms. [C] to verify. When I did, Ms. [C] reasserted her objection to the arrangement.⁶

Id.

The Navy found that GDMA had not demonstrated that it would satisfy the licensing requirement for doing business in the Northern Mariana Islands and rejected GDMA's quotation. Award was made to Ambyth, and this protest followed.

GDMA contends that the Navy improperly rejected the firm's quotation where GDMA had relied upon the Navy's previous assurances that its business arrangement with [DELETED] would satisfy the licensing requirement. In this regard, GDMA argues that "a bidder is entitled to rely on interpretations provided by Government officials who lead the bidder to reasonably regard what they say as being authoritative."

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not have to be licensed in the Northern Mariana Islands if it does not have a physical presence or employees in the Northern Mariana Islands, and all services to be performed under a contract are provided by a local independent subcontractor. Agency Report, Tab F, Memorandum, Licensing of Businesses, June 22, 2009, at 1-2. However, "[i]f an agency-principal . . . relationship is established, any action of the agency is merely an extension of the principal. This would argue to the requirements of licensing of both the agent and the principal as they would both be performing work in the Commonwealth." Id. at 3 (citation omitted).

⁶ The protester states that "all communications were between counsel for the agency . . . and [counsel for] GDMA." See Comments at 6 n.8. Regardless, the protester does not dispute that GDMA was made aware that there were problems with whether its quoted business arrangement would satisfy the licensing requirements in the Northern Mariana Islands, and that the firm was given an opportunity to fix the problem.

Comments at 9, citing, North Coast Elec. Co.--Recon., B-202208, Nov. 4, 1981, 81-2 CPD ¶ 382 at 4 GDMA argues that the Navy should have either amended the solicitation to notify offerors that the Navy's interpretation of the business license requirement had changed, or provided GDMA with an opportunity to modify its quotation.

We do not agree with GDMA that this protest concerns the agency's interpretation, or a change in its interpretation, of the solicitation. Here, the RFQ unambiguously required firms to satisfy licensing requirements to conduct business in the Northern Mariana Islands, see RFQ at 26-27, and GDMA does not dispute that it is required to satisfy the business licensing requirements of the Northern Mariana Islands. Rather, GDMA's complaint concerns the application of this unambiguous requirement to GDMA's quoted relationship with [DELETED]. Although the Navy initially believed that GDMA's proposed business arrangement would satisfy the licensing requirement, the Navy did not--contrary to the protester's arguments--subsequently change its interpretation of the solicitation's requirement, rather it simply learned that GDMA's quoted business relationship was not acceptable to the government of the Northern Mariana Islands.

From our review of the record, we find reasonable the agency's rejection of GDMA's quotation where the agency was informed by an official of the Northern Mariana Islands that the firm's quoted business relationship would not satisfy the Island's business licensing requirements, and where GDMA did not otherwise show that the firm would satisfy the licensing requirements. Although the protester contends that the official in the Liaison Office of the Northern Mariana Islands, who rendered the judgment that GDMA's quoted business arrangement would not be acceptable, was not a lawyer or qualified to provide such an opinion, that official heads an office that, as noted above, is "the single point of contact and clearinghouse on all matters relative to the U.S. Military and Veterans Affairs in the [Northern Mariana Islands]." We find no merit to GDMA's argument that the Navy could not reasonably rely upon this judgment. Moreover, the record shows that, before rejecting the firm's quotation, the Navy informed GDMA that the Northern Mariana Islands did not accept the firm's quoted business relationship with [DELETED] and provided GDMA with a an opportunity to "fix" its quoted relationship to satisfy the licensing requirements.

We also do not agree with GDMA's apparent belief that the firm could simply rely upon the Navy's assurances that GDMA's quoted business relationship with [DELETED] would satisfy the licensing requirements of the Northern Mariana Islands. Whether or not the contractor satisfies the Island's business licensing requirements is a matter to be decided by the Northern Mariana Islands, and not ultimately by the Navy. Here, the Northern Mariana Islands, through its Liaison Office, stated that GDMA's quoted business relationship with [DELETED], as GDMA's agent, would not satisfy the Island's licensing requirements. Our authority to review the reasonableness of the Navy's reliance upon that judgment does not

include reviewing the reasonableness of the judgment of the Northern Mariana Islands.⁷

The protest is denied.

Daniel I. Gordon
Acting General Counsel

⁷ GDMA argues that it proposed to use [DELETED] as a subcontractor, and not an agent, and therefore in accordance with the memorandum provided by the Office of the Attorney General, Civil Division, of the Northern Mariana Islands, its quoted business relationship with [DELETED] should have been approved. Although in its quotation, GDMA referred to [DELETED] as its “agent subcontractor”, when the Navy asked GDMA for a copy of its teaming arrangement with [DELETED], GDMA provided a letter that appointed [DELETED] as the firm’s “local agent.” Protest, exh. F, GDMA Email to the Navy, June 11, 2009. Moreover, the email from the former attorney general for the Northern Mariana Islands, which GDMA submitted to our Office, also states that [DELETED] would act as GDMA’s agent. See Comments, exh. H, Email, June 12, 2009, at 1.